

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

**MUR 7353**

DATE COMPLAINT FILED: March 27, 2018

DATE OF NOTIFICATION: April 3, 2018

LAST RESPONSE RECEIVED: April 18, 2018

DATE ACTIVATED: September 25, 2018

EXPIRATION OF SOL: March 20, 2023

ELECTION CYCLE: 2018

**COMPLAINANT:**

Jericha Deaux

**RESPONDENTS:**

Danny Tarkanian

Tarkanian for Congress and Robert Phillips  
in his official capacity as treasurer

Victoria Seaman

Victoria Seaman for Congress and Robert  
Phillips, III, in his official capacity as  
treasurer

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30101(8)(A)(i)

52 U.S.C. § 30102(e)(3)(B)

52 U.S.C. § 30104(b)

52 U.S.C. § 30116(a)(1)(A)

52 U.S.C. § 30116(f)

11 C.F.R. § 100.52(a) and (d)(1)

11 C.F.R. § 104.3

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

The Complaint alleges that Danny Tarkanian and Tarkanian for Congress made an excessive and unreported in-kind contribution to Victoria Seaman and Victoria Seaman for Congress ("Seaman for Congress") in the form of "donor information" to help her fundraise, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). As set forth

below, we recommend that the Commission exercise its prosecutorial discretion and dismiss this matter.

## II. FACTUAL BACKGROUND

Danny Tarkanian was a candidate for U.S. Senate in Nevada in 2018, and withdrew from that race on March 16, 2018, to run for Congress from the Third Congressional District of Nevada.<sup>1</sup> Tarkanian for Congress and Robert Phillips in his official capacity as treasurer is his principal campaign committee. Victoria Seaman was also a 2018 candidate in Nevada's Third District and Seaman for Congress and Robert Phillips III in his official capacity as treasurer is her principal campaign committee.<sup>2</sup> Seaman withdrew from that race on March 22, 2018, soon after Tarkanian became one of her electoral opponents.<sup>3</sup>

The Complaint alleges that Tarkanian and Tarkanian for Congress provided "donor information" to Seaman and Seaman for Congress. It bases that allegation on a March 20, 2018 Facebook post made by Tarkanian's wife, Amy Tarkanian, who was reacting to criticism of Danny Tarkanian by a Seaman supporter. In the post, Amy Tarkanian wrote: "Do you actually think that after we gave Victoria all of our personal info we had saved for cd3 [Third

<sup>1</sup> The Complaint refers to Tarkanian for Senate as the respondent. See Compl. at 1; Tarkanian for Senate Statement of Organization (Aug. 22, 2017). Tarkanian for Senate filed an amended Statement of Organization with the Commission on March 23, 2018 disclosing that it had changed its name to Tarkanian for Congress. See Tarkanian for Congress Amended Statement of Organization (Mar. 23, 2018); Colton Lochhead and Ramona Giwargis, *After Trump Tweet, Tarkanian Exits Senate Race to Run for House*, LAS VEGAS REVIEW-JOURNAL, Mar. 16, 2018, <https://www.reviewjournal.com/news/politics-and-government/nevada/after-trump-tweet-tarkanian-exits-senate-race-to-run-for-house/>.

<sup>2</sup> See Seaman for Congress Statement of Organization (Aug. 3, 2017).

<sup>3</sup> See Colton Lochhead, *Victoria Seaman Withdraws from Congressional Race*, LAS VEGAS REVIEW-JOURNAL, Mar. 23, 2018, <https://www.reviewjournal.com/news/politics-and-government/nevada/repulican-victoria-seaman-withdraws-from-congressional-race/>.

1 Congressional District], donor information to help her fundraise and invite her to all of Dannys  
2 [sic] fundraisers as well as that THIS was our intention all along?”<sup>4</sup>

3 The Complaint alleges that “[p]ersonal data on a federal campaign for a congressional  
4 district can contain data on hundreds of thousands of individual voters,” and this data is  
5 “typically a closely held campaign asset” with “significant” commercial value.<sup>5</sup> The Complaint  
6 concludes that Tarkanian and Tarkanian for Congress thus made an in-kind contribution to  
7 Seaman and Seaman for Congress, and neither committee disclosed the contribution.<sup>6</sup> The  
8 Complaint also alleges that the in-kind contribution may have been an excessive contribution.<sup>7</sup>

9 In response to the Complaint, Tarkanian asserts that he provided Seaman with “less than  
10 100 names of people that may be interested in the Nevada CD 3 race in 2018,” not the “hundreds  
11 of thousands” of names and contact information that the Complaint alleges.<sup>8</sup> Seaman for  
12 Congress asserts that Amy Tarkanian exaggerated the extent of support that it received from  
13 Tarkanian and his committee, and that the “personal info” was a small list of 80 friends that  
14 Tarkanian suggested Seaman contact for their support.<sup>9</sup> Seaman for Congress further asserts

---

<sup>4</sup> Compl. at 1, Ex. B. It appears the dispute arose when Tarkanian withdrew from the Senate race and joined the Third District race and became one of Seaman’s opponents. The Complaint attaches a purported copy of the Facebook exchange. *Id.* As mentioned above, Seaman withdrew from the race on March 22, 2018 — two days after the Facebook exchange.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> Tarkanian Resp. at 1.

<sup>9</sup> Seaman for Congress Resp. at 1.

that, under the Commission's regulations, "information shared between these parties would only be an in-kind contribution if it is deemed a mailing list."<sup>10</sup>

### III. LEGAL ANALYSIS

The Act permits an authorized committee to contribute up to \$2,000 to the authorized committee of another candidate.<sup>11</sup> Candidates and political committees are prohibited from accepting contributions in excess of the Act's contribution limits.<sup>12</sup> A "contribution" includes any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.<sup>13</sup> "Anything of value" includes in-kind contributions, such as the provision of goods or services without charge, or at a charge less than the usual and normal charge.<sup>14</sup>

The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.<sup>15</sup> These reports must include, *inter alia*, the total amount of receipts and disbursements, including the appropriate itemizations, where required.<sup>16</sup>

Both sets of Respondents, the alleged contributor and recipient, describe the material Tarkanian provided to Seaman as contact information regarding 80 to 100 people, and the

---

<sup>10</sup> *Id.* at 2.

<sup>11</sup> 52 U.S.C. § 30102(e)(3)(B); Explanation & Justification for Final Rules on Increase in Limitation on Authorized Committees Supporting Other Authorized Candidates, 71 Fed. Reg. 54,899 (Sept. 20, 2006).

<sup>12</sup> 52 U.S.C. § 30116(f).

<sup>13</sup> 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

<sup>14</sup> 11 C.F.R. § 100.52(d)(1).

<sup>15</sup> 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

<sup>16</sup> 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

1 available information does not indicate otherwise. The contact information appears to be  
2 something of value for the purpose of influencing an election for federal office and thus is an in-  
3 kind contribution.<sup>17</sup>

4 Seaman for Congress asserts that the contact information is not an in-kind contribution  
5 under 11 C.F.R. § 100.52 because the information is not a mailing list. While mailing lists are  
6 cited in the regulation as one example of goods and services that are considered in-kind  
7 contributions, the list is clearly not exhaustive because it is preceded by the phrase "include[s],  
8 but [is] not limited to." Tarkanian for Congress and Seaman for Congress should have reported  
9 the making and receipt of the in-kind contribution.<sup>18</sup> Neither committee did so.

10 However, because the value of the contact information appears to be *de minimis*,<sup>19</sup> we  
11 recommend that the Commission exercise its prosecutorial discretion and dismiss the allegations  
12 of making and accepting excessive contributions and failing to report in-kind contributions, and  
13 close the file.<sup>20</sup>

#### 14 IV. RECOMMENDATIONS

- 15 1. Dismiss the allegation that Danny Tarkanian violated 52 U.S.C. § 30102(e)(3)(B);
- 16 2. Dismiss the allegation that Tarkanian for Congress and Robert Phillips in his  
17 official capacity as treasurer violated 52 U.S.C. § 30102(e)(3)(B) and 52 U.S.C.  
18 § 30104(b);  
19

---

<sup>17</sup> See MUR 5409 (Grover Norquist, *et al.*). Norquist provided Bush-Cheney '04 with a "master contact list" of descriptions of Center-Right Coalition meetings and lists of attendees, material the Commission found to be something of value for the purpose of influencing an election for federal office and thus a contribution. However, because the material was limited in value, the Commission took no further action after finding of reason to believe. See *id.*, First Gen. Counsel's Rpt at 10-11; Certification (Oct. 20, 2004).

<sup>18</sup> See 11 C.F.R. § 104.3(a)(4)(ii), 104.3(b)(4)(vi).

<sup>19</sup> For example, one company that sells direct mail lists charges \$110 per thousand names for a donor file containing over twelve thousand names of Activists and Donors for Liberal Causes, and it charges \$90 per thousand names for a donor file containing two hundred and ten thousand names of Ohio Political Donors. See <https://politicalresources.com/mailing-list/direct-mail-email-lists>.

<sup>20</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985); see also MUR 5409 (Grover Norquist, *et al.*), *supra* note 17.

3. Dismiss the allegation that Victoria Seaman violated 52 U.S.C. § 30116(f);
4. Dismiss the allegation that Victoria Seaman for Congress and Robert Phillips, III in his official capacity as treasurer violated 52 U.S.C. § 30104(b) and 52 U.S.C. § 30116(f);
5. Approve the attached Factual and Legal Analysis;
6. Approve the appropriate letters; and
7. Close the file.

Lisa J. Stevenson  
Acting General Counsel

2.28.19  
Date

Peter G. Blumberg  
Peter G. Blumberg  
Acting Deputy Associate General Counsel for  
Enforcement

Mark Allen  
Mark Allen  
Assistant General Counsel

Delbert K. Rigsby  
Delbert K. Rigsby  
Attorney

Attachment  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4  
5 **RESPONDENTS:** Danny Tarkanian

MUR 7353

6 Tarkanian for Congress and Robert Phillips  
7 in his official capacity as treasurer

8 Victoria Seaman

9 Victoria Seaman for Congress and Robert Phillips, III  
10 in his official capacity as treasurer

11  
12 **I. INTRODUCTION**

13 The Complaint alleges that Danny Tarkanian and Tarkanian for Congress made an  
14 excessive and unreported in-kind contribution to Victoria Seaman and Victoria Seaman for  
15 Congress ("Seaman for Congress") in the form of "donor information" to help her fundraise, in  
16 violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). As set forth  
17 below, the Commission exercises its prosecutorial discretion and dismisses this matter.

18 **II. FACTUAL BACKGROUND**

19 Danny Tarkanian was a candidate for U.S. Senate in Nevada in 2018, and withdrew from  
20 that race on March 16, 2018, to run for Congress from the Third Congressional District of  
21 Nevada.<sup>1</sup> Tarkanian for Congress and Robert Phillips in his official capacity as treasurer is his  
22 principal campaign committee. Victoria Seaman was also a 2018 candidate in Nevada's Third  
23 District and Seaman for Congress and Robert Phillips III in his official capacity as treasurer is

<sup>1</sup> The Complaint refers to Tarkanian for Senate as the respondent. *See* Compl. at 1; Tarkanian for Senate Statement of Organization (Aug. 22, 2017). Tarkanian for Senate filed an amended Statement of Organization with the Commission on March 23, 2018 disclosing that it had changed its name to Tarkanian for Congress. *See* Tarkanian for Congress Amended Statement of Organization (Mar. 23, 2018); Colton Lochhead and Ramona Giwargis, *After Trump Tweet, Tarkanian Exits Senate Race to Run for House*, LAS VEGAS REVIEW-JOURNAL, Mar. 16, 2018, <https://www.reviewjournal.com/news/politics-and-government/nevada/after-trump-tweet-tarkanian-exits-senate-race-to-run-for-house/>.

1 her principal campaign committee.<sup>2</sup> Seaman withdrew from that race on March 22, 2018, soon  
2 after Tarkanian became one of her electoral opponents.<sup>3</sup>

3 The Complaint alleges that Tarkanian and Tarkanian for Congress provided “donor  
4 information” to Seaman and Seaman for Congress. It bases that allegation on a March 20, 2018  
5 Facebook post made by Tarkanian’s wife, Amy Tarkanian, who was reacting to criticism of  
6 Danny Tarkanian by a Seaman supporter. In the post, Amy Tarkanian wrote: “Do you actually  
7 think that after we gave Victoria all of our personal info we had saved for cd3 [Third  
8 Congressional District], donor information to help her fundraise and invite her to all of Dannels  
9 [sic] fundraisers as well as that THIS was our intention all along?”<sup>4</sup>

10 The Complaint alleges that “[p]ersonal data on a federal campaign for a congressional  
11 district can contain data on hundreds of thousands of individual voters,” and this data is  
12 “typically a closely held campaign asset” with “significant” commercial value.<sup>5</sup> The Complaint  
13 concludes that Tarkanian and Tarkanian for Congress thus made an in-kind contribution to  
14 Seaman and Seaman for Congress, and neither committee disclosed the contribution.<sup>6</sup> The  
15 Complaint also alleges that the in-kind contribution may have been an excessive contribution.<sup>7</sup>

---

<sup>2</sup> See Seaman for Congress Statement of Organization (Aug. 3, 2017).

<sup>3</sup> See Colton Lochhead, *Victoria Seaman Withdraws from Congressional Race*, LAS VEGAS REVIEW-JOURNAL, Mar. 23, 2018, <https://www.reviewjournal.com/news/politics-and-government/nevada/republican-victoria-seaman-withdraws-from-congressional-race/>.

<sup>4</sup> Compl. at 1, Ex. B. It appears the dispute arose when Tarkanian withdrew from the Senate race and joined the Third District race and became one of Seaman’s opponents. The Complaint attaches a purported copy of the Facebook exchange. *Id.* As mentioned above, Seaman withdrew from the race on March 22, 2018 — two days after the Facebook exchange.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> *Id.* at 3.



1 In response to the Complaint, Tarkanian asserts that he provided Seaman with “less than  
2 100 names of people that may be interested in the Nevada CD 3 race in 2018,” not the “hundreds  
3 of thousands” of names and contact information that the Complaint alleges.<sup>8</sup> Seaman for  
4 Congress asserts that Amy Tarkanian exaggerated the extent of support that it received from  
5 Tarkanian and his committee, and that the “personal info” was a small list of 80 friends that  
6 Tarkanian suggested Seaman contact for their support.<sup>9</sup> Seaman for Congress further asserts  
7 that, under the Commission’s regulations, “information shared between these parties would only  
8 be an in-kind contribution if it is deemed a mailing list.”<sup>10</sup>

9 **III. LEGAL ANALYSIS**

10  
11 The Act permits an authorized committee to contribute up to \$2,000 to the authorized  
12 committee of another candidate.<sup>11</sup> Candidates and political committees are prohibited from  
13 accepting contributions in excess of the Act’s contribution limits.<sup>12</sup> A “contribution” includes  
14 any gift, subscription, loan, advance or deposit of money or anything of value made by any  
15 person for the purpose of influencing any election for Federal office.<sup>13</sup> “Anything of value”

---

<sup>8</sup> Tarkanian Resp. at 1.

<sup>9</sup> Seaman for Congress Resp. at 1.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> 52 U.S.C. § 30102(e)(3)(B); Explanation & Justification for Final Rules on Increase in Limitation on Authorized Committees Supporting Other Authorized Candidates, 71 Fed. Reg. 54,899 (Sept. 20, 2006).

<sup>12</sup> 52 U.S.C. § 30116(f).

<sup>13</sup> 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

1 includes in-kind contributions, such as the provision of goods or services without charge, or at a  
2 charge less than the usual and normal charge.<sup>14</sup>

3 The Act requires committee treasurers to file reports of receipts and disbursements in  
4 accordance with the provisions of 52 U.S.C. § 30104.<sup>15</sup> These reports must include, *inter alia*,  
5 the total amount of receipts and disbursements, including the appropriate itemizations, where  
6 required.<sup>16</sup>

7 Both sets of Respondents, the alleged contributor and recipient, describe the material  
8 Tarkanian provided to Seaman as contact information regarding 80 to 100 people, and the  
9 available information does not indicate otherwise. The contact information appears to be  
10 something of value for the purpose of influencing an election for federal office and thus is an in-  
11 kind contribution.<sup>17</sup>

12 Seaman for Congress asserts that the contact information is not an in-kind contribution  
13 under 11 C.F.R. § 100.52 because the information is not a mailing list. While mailing lists are  
14 cited in the regulation as one example of goods and services that are considered in-kind  
15 contributions, the list is clearly not exhaustive because it is preceded by the phrase “include[s],

---

<sup>14</sup> 11 C.F.R. § 100.52(d)(1).

<sup>15</sup> 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

<sup>16</sup> 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

<sup>17</sup> See MUR 5409 (Grover Norquist, *et al.*). Norquist provided Bush-Cheney '04 with a “master contact list” of descriptions of Center-Right Coalition meetings and lists of attendees, material the Commission found to be something of value for the purpose of influencing an election for federal office and thus a contribution. However, because the material was limited in value, the Commission took no further action after finding of reason to believe. See *id.*, First Gen. Counsel’s Rpt at 10-11; Certification (Oct. 20, 2004).

1 but [is] not limited to.” Tarkanian for Congress and Seaman for Congress should have reported  
2 the making and receipt of the in-kind contribution.<sup>18</sup> Neither committee did so.

3 However, because the value of the contact information appears to be *de minimis*,<sup>19</sup> the  
4 Commission exercises its prosecutorial discretion and dismisses the allegations of making and  
5 accepting excessive contributions and failing to report in-kind contributions.<sup>20</sup>

---

<sup>18</sup> See 11 C.F.R. § 104.3(a)(4)(ii), 104.3(b)(4)(vi).

<sup>19</sup> For example, one company that sells direct mail lists charges \$110 per thousand names for a donor file containing over twelve thousand names of Activists and Donors for Liberal Causes, and it charges \$90 per thousand names for a donor file containing two hundred and ten thousand names of Ohio Political Donors. See <https://politicalresources.com/mailling-list/direct-mail-email-lists>.

<sup>20</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985); see also MUR 5409 (Grover Norquist, *et al.*), *supra* note 17.